Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
District of Columbia Public Schools,	
Petitioner,	PERB Case No. 15-A-05
v.	
Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO (on behalf of Sharon Wells),	Opinion No. 1574
Respondent.	

DECISION AND ORDER

Petitioner District of Columbia Public Schools ("DCPS") appeals from a "Decision & Award as to Arbitrability" ("Award") finding arbitrable a grievance filed by Respondent Council of School Officers, Local 4, American Federation of School Administrators, AFL-CIO, ("Union") regarding the termination of a principal. The collective bargaining agreement between DCPS and the Union ("CBA") recognizes the Union as the exclusive representative for a bargaining unit that includes principals.[1]

For the reasons addressed below, we conclude that the Request does not establish a statutory basis for our review of the Award, and we therefore deny the Request.

I. Statement of the Case

A. The Award

The Award states that on June 23, 2011, grievant Sharon Wells ("Wells" or "Grievant") was appointed to be a principal of a DCPS elementary school for a one-year term beginning July 18, 2011. On May 23, 2012, Kaya Henderson, chancellor of DCPS, ("the Chancellor") reappointed Wells to another one-year term.[2] That summer, the Chancellor became displeased with Wells's responses to the concerns of a parent and informed Wells of her displeasure.[3] On

[1] Award 5; Award App. A, Joint Stipulation of Facts ¶ 2; CBA art. I(A).
[2] Award 7-8.
[3] Award 8-9.

August 6, 2012, DCPS gave Wells a letter signed by the Chancellor and entitled "Notice of Termination." The notice stated, "In accordance [with] 5-E DCMR 520.2, I am hereby providing you with notice of termination of your appointment as Principal with the District of Columbia Public Schools (DCPS). Your separation from service will be effective at the close of business August 21, 2012."[4] The parties' joint statement of facts states, "DCPS relied upon the Chancellor's discretion, established by Title 5-E DCMR Section 520.2, for the removal action. Prior to this case, DCPS had relied on the Chancellor's authority under Title5-E DCMR Section 520.2 for its decision to not reappoint principals and assistant principals at the end of the school year."[5]

The Union challenged the termination in a letter to DCPS, which it styled a grievance. DCPS responded that it did not believe the termination could be grieved and refused to process the grievance.[6] The Union advanced the case to arbitration, asserting that the termination violated the CBA.[7] At an arbitration hearing, DCPS took the position that the case was not subject to arbitration due to the provisions of title 5-E, chapter 5-E5, rule 5-E520 of the D.C. Municipal Regulations ("DCMR"), in particular subsection 520.2. Subsection 520.2 provides, "Retention and reappointment shall be at the discretion of the Superintendent."[8]

The arbitrator, Homer LaRue, bifurcated the proceedings so that arbitrability could be addressed before any hearing on the merits.[9] After receiving briefs and a joint stipulation of facts from the parties, the arbitrator issued an Award in which he set forth the following relevant provisions of the parties' CBA:

> **Article VIII Grievance and Arbitration**
> **A. Definition**
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> A grievance is defined as an unsettled complaint concerning any alleged violation, misrepresentation, or misapplication of any of the provisions of this Agreement. A difference or dispute not involving the meaning, application or interpretation of the terms and provisions of this Agreement shall not constitute a grievance for the purpose of this Article, but may be addressed through other appropriate administrative or legal procedures.
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> **Article X Disciplinary Action**
> **A.**
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> 1. The parties agree that one of the purposes of any disciplinary action is to modify an employee's unacceptable behavior to a standard of acceptable

[4] Award 9; DCPS's Br. Ex. 1.
[5] Award App. A, Joint Stipulation of Facts ¶ 11.
[6] Award 10.
[7] Award App. A, Joint Stipulation of Facts ¶ 14.
[8] DCPS never directly quotes subsection 520.2, which refers to "the Superintendent" and not the chancellor. However, where a provision of the DCMR written before the Public Education Reform Amendment Act of 2007, D.C. Law 17-9, refers to the superintendent, the D.C. Court of Appeals has read the provision to refer to the chancellor. *See Thompson v. District of Columbia*, 978 A.2d 1240, 1242-44 (D.C. 2009)
[9] *Id.* ¶¶ 16, 17.

> behavior and any disciplinary action taken against an officer must meet the tests of just cause.
>
> 2. The Board will practice progressive discipline for all Officers, excluding Principals/Assistant Principals, regarding all minor infractions and recognizes that the verbal or written warning shall be used prior to issuing formal written letters of reprimand. . . .
>
> No disciplinary action shall be taken against an officer except for just cause.[10]

Upon consideration of the evidence and arguments, the arbitrator rejected DCPS's interpretation of subsection 520.2 as being inconsistent with DCPS's past practices. He made the following award:

> 1. The termination of the appointment of Sharon Wells, effective August 21, 2012, as Principal with the District of Columbia Public Schools (DCPS), is subject to arbitration under the parties' CBA.
>
> 2. Sharon Wells and the [Union] may proceed to arbitration on the merits of the grievance.
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> 3. The Arbitrator retains jurisdiction to determine the merits of the grievance.[11]

B. The Arbitration Review Request

In its Request, DCPS contends that the arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.[12]

Quoting from the definition of "grievance" in article VIII(A) of the contract, DCPS asserts that "[t]he parties' collective bargaining agreement specifically excludes disputes 'not involving the meaning, application, or interpretation of the terms and provisions of this Agreement' from the grievance and arbitration process under the contract."[13] DCPS contends that by requiring it "to arbitrate a dispute specifically excluded from the parties' grievance proceedings and arbitration agreement, the Arbitrator has added terms to the CBA and therefore exceeded his jurisdiction under the contract."[14]

DCPS argues that the Award is contrary to law and then argues separately that the Award is contrary to public policy. In arguing that the Award is contrary to law, DCPS notes that the D.C. Court of Appeals has stated that "law" is not limited to statutes but includes administrative

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[10] Award 6-7.
[11] Award 23.
[12] Section 1-605.02(6) of the D.C. Official Code empowers the Board to modify, set aside, or remand an arbitration award "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."
[13] Request ¶ 8 (quoting CBA art. VIII(A)).
[14] Request ¶ 10.

rules and regulations.[15] DCPS alleges, "According to Title 5 of the [DCMR] Chapter 5, the retention and reappointment of principals is at the sole discretion of the Chancellor of DCPS. See, Title 5 DCMR § 520.2."[16] Pursuant to this provision, the Chancellor removed Wells from her position as a principal.[17] DCPS states that the CBA does not contain an agreement to arbitrate disputes under 5 DCMR § 520 nor does it refer to 5 DCMR § 520.[18]

Regarding its argument that the Award is contrary to public policy, DCPS states that an award contrary to law *ipso facto* may be said to be contrary to the public policy that the law embodies.[19] Additionally, DCPS claims a right under D.C. Official Code § 1-617.08 and article IV of the CBA to direct its employees and to determine its organization. "This policy," DCPS argues, "is found in the Chancellor's authority to retain and reappoint principals, as established by Title 5 of the DCMR. Insofar as separate provisions of Title 5 DCMR 520 individually and separately address retention and reappointment, they must mean separate things."[20]

Pursuant to Board Rule 538.2, DCPS requested the Board to determine that there may be grounds to modify or set aside the Award and, if it so finds, to afford DCPS an opportunity to brief the matter. The Union filed an Opposition.

C. The Board's Decision and Order in Opinion No. 1540

The Board issued a decision and order, Opinion No. 1540, in which it first considered DCPS's jurisdictional arguments. The Board found that article VIII(A) did not exclude Wells's grievance because the grievance involved a dispute over "the meaning, application, or interpretation" of article X(A) of the CBA, which contains a provision that "[n]o disciplinary action shall be taken against an officer except for just cause." The parties dispute whether the termination of the Grievant was a "disciplinary action" and disagree over the application of the just cause provision to the Grievant's termination. Thus, the dispute falls within article VIII(A)'s definition of a grievance as "an unsettled complaint concerning any alleged violation, misinterpretation, or misapplication of any of the provisions of this Agreement." The arbitrator found the grievance to be arbitrable by construing those provisions of the contract and applying them to the issues in the case. Consequently, the Board held that the arbitrator acted within his jurisdiction to analyze and interpret the applicable provisions of the CBA.[21]

Turning to DCPS's claim that the Award was contrary to law and public policy, the Board noted that an interpretation that renders two words of a statute interchangeable is not

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[15] Request ¶ 11 n.4 (citing *J.C. & Assocs. v. D.C. Bd. of Appeals & Review*, 778 A.2d 296, 303 (D.C. 2001) (construing the District of Columbia Administrative Procedure Act)).
[16] Request ¶ 11.
[17] Request ¶¶ 11- 12.
[18] Request ¶ 13.
[19] Request ¶ 15 (citing *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, 973 A.2d 174, 179 (D.C. 2009)).
[20] Request ¶ 15.
[21] *D.C. Pub. Sch. v. Council of Sch. Officers, Local 4*, 62 D.C. Reg. 14658, Slip Op. No. 1540 at 4, PERB Case No. 15-A-05 (2015) (citing *D.C. Metro. Police Dep't v. F.O.P./Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 11609, Slip Op. No. 1487 at p. 9, PERB Case No. 09-A-05 (2014)).

favored because it makes one of the two superfluous, thereby contravening a basic rule of statutory construction. That rule is "to avoid conclusions that effectively read language out of a statute whenever a reasonable interpretation is available that can give meaning to each word in the statute."[22] If retention has a different meaning than reappointment, then the termination of Wells might have been an exercise of the Chancellor's discretion under subsection 520.2. If that discretion is not reviewable by an arbitrator, then the arbitrator's authority may be limited or eliminated. The Board observed that "DCPS has not expressly asserted that section 520.2 supersedes the just cause provision of the CBA, and conversely the Union has not expressly asserted that a chancellor's decision not to retain a principal during a term is subject to the just cause provision of the CBA notwithstanding section 520.2."[23]

In view of the foregoing, the Board found, pursuant to Board Rule 538.2, that there may be grounds to modify or set aside the Award. The Board's order so notified the parties and requested "that the parties fully brief their position regarding Rule 5-E520 of the D.C. Municipal Regulations, particularly sections 520.2 and 520.3, whether either of those sections supersedes the just cause provision of the CBA, and the effect of those sections on the arbitrability of this matter."[24] The order further stated, "Please address in your briefs the issues discussed in this decision and order and any other argument, issue, and federal or District laws or policies which you deem relevant."[25]

D. The Parties' Briefs

The Union takes the position in its brief that while a decision not to reappoint a principal falls outside of the CBA's just cause provision, a decision not to retain a principal who had been reappointed does not.[26] The Union makes two arguments in support of its position. First, DCPS has never before interpreted subsection 520.2 to empower the Chancellor with discretion over retention of principals during a term of appointment and consequently the interpretation of subsection 520.2 that DCPS now advances is not entitled to deference.[27] Second, DCPS's view that principals and assistant principals may be terminated during the school year for no reason would withdraw from them the just cause protections of the CBA, making the just cause provision "nugatory"[28] and making the principals and assistant principals at-will employees.

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[22] *D.C. Pub. Sch. v. Council of Sch. Officers, Local 4*, Slip Op. No. 1540 at 6 (citing *State, ex rel. Winkleman, v. Ariz. Navigable Stream Comm'n*, 229 P.3d 242, 254 (Ariz. App. 2010) and *Sch. St. Assocs. Ltd. P'ship v. District of Columbia*, 764 A.2d 798, 807 (D.C. 2001)).
[23] *D.C. Pub. Sch. v. Council of Sch. Officers, Local 4*, Slip Op. No. 1540 at 7.
[24] *Id.* at 7.
[25] *Id.*
[26] Union's Br. 1.
[27] Union's Br. 1-2. At the arbitration, the Union introduced six letters notifying principals pursuant to subsection 520.2 that they would not be reappointed effective at the end of the school year. Award 17-18. Neither the Award nor DCPS's brief refer to any letters notifying principals pursuant to subsection 520.2 that they would be terminated before the end of a school year. *See* Award App. A, Joint Stipulation of Facts ¶ 11.
[28] Union's Br. 4.

DCPS in its brief argues that the Board should set aside or modify the Award on one ground, that being that the award is contrary to law and public policy.[29] It states the issue before the Board as "[w]hether the arbitration award directing the parties to proceed to arbitration on the grievance challenging Ms. Wells' discharge is contrary to Title 5 of the DCMR and subject to being modified or set aside pursuant to title 1-605.02(6) of the D.C. Official Code?"[30]

Although the brief does not expressly contend that the arbitrator exceeded his jurisdiction under the CBA, DCPS quotes the CBA's definition of a grievance and then repeats its argument that Wells's termination is beyond the scope of grievances that the parties agreed in the contract to arbitrate:

> [T]he parties' collective bargaining agreement does not contain an agreement to arbitrate disputes concerning the Chancellor's exercise of discretion under Title 5-E DCMR 520.2. The arbitration agreement is based solely on the grievance definition found in the collective bargaining agreement, which is limited to disputes regarding the terms and provisions of the contract itself. Furthermore, the contract contains an explicit provision excluding from the agreement to arbitrate any disputes that do not concern the terms and provisions of the contract itself. As the contract does not contain any provision referencing the Chancellor's exercise of discretion under Title 5-E DCMR 520.2, disputes concerning such discretion cannot be a violation of the contract for the purposes of the agreement to arbitrate.[31]

DCPS contends that an exercise of the Chancellor's discretion not to retain a principal is not a disciplinary action and thus is not subject to challenge under the just cause provision.[32]

DCPS notes that in an earlier case the D.C. Superior Court stated, "It is clear that the appointment and retention of a DCPS principal is at the sole discretion of the Chancellor."[33] DCPS stresses that both appointment and retention are at the Chancellor's discretion and distinguishes between the two, quoting a statement of the D.C. Court of Appeals that courts "must give effect to all of the provisions of the Act, so that no part of it will be either redundant or superfluous."[34] Arguing for an interpretation that renders neither "retention" nor "reappointment" superfluous in subsection 520.2, DCPS asserts that subsections 520.3 and 520.4 treat the two separately. Subsection 520.3 concerns reversion rights of principals and assistant principals who are not *retained*. In contrast, subsection 520.4 concerns reversion rights of principals and assistant principals who are not *reappointed*.

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[29] DCPS's Br. 1-2.
[30] DCPS's Br. 5.
[31] DCPS's Br. 11.
[32] DCPS's Br. 7-9.
[33] *D.C. Pub. Sch. v. D.C. Pub. Employee Relations Bd.*, No. 13 CA 7322, slip op. at 8 (D.C. Super. Ct. Jan. 8, 2015).
[34] *Office of the People's Counsel v. Pub. Serv. Comm'n*, 477 A.2d 1079, 1084 (D.C. 1984).

DCPS argues that to give meaningful effect to all provisions of the regulations, subsection 520.2 must be interpreted as bestowing two types of discretion on the Chancellor: (1) discretion over reappointment decisions tied to the expiration of a principal's term and (2) discretion over retention of a principal that is not restricted to the end of a term.[35]

DCPS asserts in conclusion that "the Arbitrator's finding that the Agency's termination of Ms. Wells was subject to arbitration is contrary to District law, supporting Regulations, and the unambiguous terms of the collective bargaining agreement."[36]

III. Discussion

Although no longer couched in terms of jurisdiction, the argument DCPS makes regarding article VIII(A) of the CBA is the same argument the Board rejected in Opinion No. 1540. DCPS claims that article VIII(A)'s definition of grievance excludes the present case. That definition states:

> A grievance is defined as an unsettled complaint concerning any alleged violation, misrepresentation, or misapplication of any of the provisions of this Agreement. A difference or dispute not involving the meaning, application or interpretation of the terms and provisions of this Agreement shall not constitute a grievance for the purpose of this Article, but may be addressed through other appropriate administrative or legal procedures.

DCPS's contention that under subsection 520.2 the termination was not a "disciplinary action" as the term is used in the just cause provision places the case squarely within article VIII(A)'s definition of a grievance. This matter involves "the meaning, application or interpretation" of the words "disciplinary action." It also involves an "alleged violation" of the just cause provision of the CBA, as the arbitrator concluded:

> In the instant matter, Grievant claims that DCPS disciplined her and removed her without cause. DCPS attempts to argue that the agreement to arbitrate does not include the instant dispute. The Arbitrator finds that *Dickerson* [*v. District of Columbia*[37]] lends additional authority to the Arbitrator's conclusion that the language of the CBA between the parties is broad enough to encompass an alleged breach of contract of the kind alleged in the instant dispute. In the instant matter, the alleged breach is the failure by DCPS to demonstrate just cause to remove (i.e., to discipline and discharge) Grievant during the term of her one-year appointment.[38]

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[35] DCPS's Br. 6.
[36] DCPS's Br. 11.
[37] 70 F. Supp. 3d 311, 321 (D.D.C. 2014) (holding that a claim of former principals for breach of the contract between DCPS and the Union is cognizable as a grievance as defined in the contract).
[38] Award 22.

The parties bargained for the arbitrator's interpretation of article VIII(A), and absent a violation of law evident on the face of the Award, the Board will not substitute its interpretation, or DCPS's, for that of the arbitrator.[39]

Accordingly, the Union's challenge to Wells's termination is a grievance under article VIII(A). In article VIII(B)(6)(c), the parties agreed to submit unresolved grievances to arbitration. Therefore, pursuant to article VIII, the parties agreed to arbitrate this dispute. Having done so, the parties thereby agreed to be bound by the arbitrator's interpretation of subsection 520.2: "Unless expressly provided to the contrary, when parties agree to submit a matter to arbitration they not only agree to be bound by the Arbitrator's interpretation of the collective bargaining agreement but also to his interpretation of related rules and/or regulations."[40]

DCPS has cited no provision stating that the parties do not agree to be bound by the arbitrator's interpretation of subsection 520.2 or of any other regulation. The only express exclusion DCPS cites is the statement in article VIII(A) of the CBA that a "difference or dispute not involving the meaning, application or interpretation of the terms and provisions of this Agreement shall not constitute a grievance for the purpose of this Article. . . ." As discussed above, article VIII(A) does not exclude this grievance. The arbitrator found that the present dispute does involve the meaning, application, or interpretation of the terms and provisions of the agreement. In asserting that article VIII(A) excludes "from the agreement any disputes that do not concern the terms and provisions of the contract itself," DCPS seems to be restricting arbitration to cases that involve a contractual issue and nothing else, not even the issue of a related regulation that DCPS raised as a defense. It is clear, however, that an arbitrator will need to resolve disputes on matters not written in the CBA (e.g., procedural and evidentiary issues).

It is equally clear that when a party raises a regulation as a defense to a grievance, the arbitrator may need to interpret the regulation in order to determine how it impacts the alleged contractual violation being grieved. Only an express provision excluding a particular type of grievance from arbitration can overcome the presumption of arbitrability,[41] and the provision DCPS relies upon does not expressly exclude a dispute that involves interpretation of terms of the contract as well as interpretation of a related regulation. Indeed, the only contractual provision that refers to DCPS regulations, a contractual provision the parties have not addressed either in the arbitration or in this arbitration review, would seem to override any objection based upon subsection 520.2. Article V of the CBA provides, "The provisions of this Agreement shall supersede any Rule of the Board of Education pertaining to the specific provisions herein, to the extent that such provisions in this Agreement are lawful and are inconsistent with such Rule."

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[39] *D.C. Metro. Police Dep't v. D.C. Pub. Employee Relations Bd.*, 901 A.2d 784, 789 (D.C. 2006); *D.C. Dep't of Corrs. v. F.O.P./Dep't of Corrs. Labor Comm.*, 9 D.C. Reg. 12702, Slip Op. No. 1326 at 6, PERB Case No. 10-A-14 (2014)

[40] *D.C. Pub. Sch. v. Teamsters Local No. 639*, 49 D.C. Reg. 4351, Slip Op. No. 423 at 5, PERB Case No. 95-A-06 (1995). The Board has reaffirmed many times that by submitting a matter to arbitration, parties agree to be bound by the arbitrator's interpretation of related rules and regulations. *See, e.g., D.C. Pub. Sch. and Washington Teachers' Union-Local 6*, 60 D.C. Reg. 12096, Slip Op. No. 1406 at 5, PERB Case No. 12-A-08 (2013).

[41] *D.C. Dep't of Fire & Emergency Med. Servs. v. AFGE. Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at p. 3, PERB Case No. 10-A-09 (2012).

Because this dispute is a grievance and the CBA does not exclude from arbitration grievances involving a regulatory issue, the parties agreed to submit this dispute to arbitration and to be bound by the arbitrator's interpretation of subsection 520.2.

In Opinion No. 1540, we observed that the question of whether subsection 520.2 gives the Chancellor discretion over retention of a principal in the midst of a term was presented in neither of the cases of non-reappointment of principals that DCPS has raised, *Gray v. D.C. Public Schools*[42] and *D.C. Public Schools v. D.C. Public Employee Relations Board*.[43] What the arbitrator said about *Gray* applies equally to *D.C. Public Schools v. D.C. Public Employee Relations Board*. The case concerned "the situation in which the Chancellor, pursuant to Section 520 of the DCMR, elects not to retain or to reappoint a principal at the end of that employee's one-year term of appointment . . . [and] does not address the fact situation presented by this dispute—that is, that Grievant was still in the status of a reappointed principal with a one-year term of appointment."[44] The arbitrator rejected DCPS's argument that subsection 520.2 empowers the Chancellor to remove a principal during a term without just cause review, finding the regulation to be no bar to the arbitrability of the grievance.[45] The Board will not set aside an award due to a party's disagreement with an arbitrator's interpretation of a related regulation, such as subsection 520.2.[46]

Further, the regulations presently in effect do not support DCPS's contextual argument for its interpretation of subsection 520.2. DCPS argues that retention and re-appointment are two distinct discretionary acts the consequences of which the regulations treat separately:

> Title 5-E DCMR §520 contains separate provisions establishing an employee's reversion rights in circumstances of either non-retention (Title 5-E DCMR §520.3) or non-reappointment (Title 5-E DCMR § 520.4). Title 5-E DCMR § 520.3 specifically concerns an employee's right to revert - in the event of non-retention - to the highest level of employment held prior to "his or her removal from the position of Principal or Assistant Principal;" while Title 5-E DCMR § 520.4 refers to an employee's reversion rights "upon the expiration of his or her term appointment."
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> . . . While reappointment decisions are specifically tied to the expiration of an employee's term appointment under DCMR §

[42] OEA Matter No. 1601-0122-08 (Oct. 23, 2009).
[43] No. 13 CA 7322 (D.C. Super. Ct. Jan. 8, 2015).
[44] Award 16.
[45] Award 17-20.
[46] *D.C. Pub. Sch. and Washington Teachers' Union-Local 6*, 60 D.C. Reg. 12096, Slip Op. No. 1406 at 4-5, PERB Case No. 12-A-08 (2013) (deferring to arbitrator's interpretation of 5-E DCMR § 1401.2(b)); *D.C. Office of the Chief Fin. Officer and AFSCME, Dist. Council 20, Local 2776 (on behalf of Gonzales)*, 60 D.C. Reg. 7218, Slip Op. No. 1386 at 3, 6, PERB Case No. 12-A-06 (2013) (deferring to arbitrator's interpretation of the District Personnel Manual).

> 520.4, exercise of the Chancellor's discretion for retention is not restricted in the same way under Title 5-E DCMR §520.3.[47]

DCPS acknowledges, however, that subsection 520.4 refers to a "person who is not reappointed . . . upon the expiration of a three (3) year term of appointment," whereas subsection 520.1 authorizes one-year terms and accordingly DCPS has been appointing principals to one-year terms.[48] Notwithstanding the dichotomy DCPS attempts to create, the arbitrator found that subsection 520.3 has been used in all letters of non-reappointment since 2009.[49] He concluded that DCPS's customary usage of its own regulations "negates the argument that [retention and reappointment] are independent bases for the exercise of the Chancellor's discretion."[50]

DCPS's citation of only subsection 520.3 and not 520.4 in all its notices since 2009 was proper because subsection 520.4 was repealed in 1997. The predecessor of subsection 520.4 was initially adopted in 1982 under the heading "Three-Year Term Appointments to Principal and Assistant Principal Positions."[51] In 1997, the Emergency Transitional Education Board of Trustees issued a notice of final rulemaking that stated as follows:

> **Delete the title and present language of Section 520 and substitute the following amended paragraphs:**
>
> 520 One Year Appointments of Principals and Assistant Principals
>
> 520.1 Persons appointed to a position as Principal or Assistant Principal shall serve one (1) year, without tenure in the position.
>
> 520.2 Retention and reappointment shall be at the discretion of the Superintendent.
>
> 520.3 A person who is not retained in the position of Principal or Assistant Principal and who holds permanent status in another position in the D.C. Public Schools shall revert to the highest prior permanent level of employment upon his or her removal from the position of Principal or Assistant Principal; Provided, that this right shall not include the right to any particular position or office previously held.[52]

[47] DCPS's Br. 6 (footnote omitted).
[48] DCPS's Br. 6 n.4.
[49] Award 18.
[50] Award 19.
[51] 29 D.C. Reg. 4131 (Sept. 17, 1982).
[52] 44 D.C. Reg. 7536, 7537 (Dec. 12, 1997).

Provisions including subsection 520.4 that related to three-year terms were deleted from section 520, which now concerns only one-year terms as its new title reflects. Due to an error in codification, the deleted regulations were retained in the version of section 520 on the website of the Office of Documents and Administrative Issuances through the date of the briefs filed in this case.

Since the repeal of subsection 520.4 in 1997, subsection 520.3 has been the only subsection that DCPS could cite in its notices for the reversion rights of principals who are not reappointed, and that subsection uses the word "retained" only. As the arbitrator wrote, "This usage by DCPS tends to lend credence to the interpretation that the terms 'retention' and 'reappointment' have been used interchangeably by DCPS rather than as separate bases for removal of a principal."[53]

Even if DCPS's interpretation of subsection 520.2 were supported by extant regulations, its disagreement with the arbitrator's interpretation of subsection 520.2 would not be a basis for setting aside or modifying the Award any more than is its disagreement with the arbitrator's interpretation of the CBA. It is the arbitrator's interpretation of the CBA and related regulations, not the Board's, for which the parties have bargained.[54] Should a party desire further clarification of the arbitrator's interpretation of the related regulations, it may request such clarification from him as the arbitration proceeds to the merits.

For the reasons discussed, no statutory basis exists for setting aside the Award; the Request is, therefore, denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is denied. The Award is sustained.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

April 21, 2016

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[53] Award 18.
[54] *D.C. Dep't of Youth Rehab. Servs. v. F.O.P/Dep't of Youth Rehab. Servs. Labor Comm.*, 62 D.C. Reg. 5913, Slip Op. No. 1513 at 6, PERB Case No. 15-A-02 (2015).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 15-A-05 was transmitted via File & ServeXpress to the following parties on this the 26th day of April 2016.

Kaitlyn A. Girard
D.C. Office of Labor Relations and Collective Bargaining
441 Fourth Street, N.W. Suite 820 North
Washington, D.C. 20001

VIA FILE & SERVEXPRESS

Mark J. Murphy
Mooney, Green, Saidon, Murphy & Welch, P.C.
1920 L Street NW, suite 400
Washington, D.C. 20036

VIA FILE & SERVEXPRESS

/s/ Sheryl Harrington
D.C. Public Employee Relations Board
1100 4th Street, SW, Suite E630
Washington, D.C. 20024